1944 K File No. C. 44/44

Legal Dept.

C BRANCH

Subject:—

P/10E

Law officers Rules

Rulings and Instructions given under —

File No. C 44/44

Gen. 194 e.

339

No.D.A.III-27-CD/4971 Bombay, the 14 Feb.1944.

From,

The Accountant General, Bombay.

To,

The Remembrancer of Legal Affairs, Bombay.

Subject:-Fees of District Public Prosecutors.

Sir,

I have the honour to observe that under rule 23 of the Law Officers (Conditions of service) Rules. District Public Prosecutors are entitled to a fee of Rs.18/. per day for every day on which he is actually engaged in criminal work. The admissibility of the fees is, however, subject to the 3 provisos to that rules. As the fulfilment of the conditions of Provisos (a) and (b) is not, susceptible of being examined in audit, it is suggested that the court certificates may be made to contain an indication that the case was not merely adjourned or that only judgement was not pronounced. If this is practicable I would, therefore, request to be informed whether the suggestion meets with your approval and if so, whether requisite instructions in the matter will be issued.

I have the honour to be,

Sir,

Your most obedient servant,

Sd/.

Assistant Accounts Officer.

VHR
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No.1477

Office of the Remembrancer of
Legal Affairs.
Bombay Castle, 25th February 1944.

Memorandum.

The undersigned presents compliments to the Accountant General Bombay, and with reference to his letter No. E.A.III-27-CD/4971, dated the 14th February 1944, is directed to inform him that the suggestion made therein is approved and necessary instructions in the matter are being issued by a Circular to the District Magistrates and the Sessions Judges.

For Remembrancer of Legal
Affairs.

To

The Accountant General,

Bombay.

No.1884

Officer of the Remembrancer of
Legal Affairs.
Bombay Castle,13th March 1944.

CIRCULAR.

Under rule 23 of the Law Officers (Conditions of Service)Rules, a District Public Prosecutor is entitled to a fee of Rs. 18/. per day for every day on which he is actually engaged in criminal work.The admissibility of the fee is ,however, subject to three provisos to that rule.As the fulfilment of the conditions of provisos (a) and (b) is not susceptible of being examined in audit the court certificate which is required under Rule 196(2) of the Rules for the Conduct of Legal Affairs of Government should certify that on none of the specified dates were the proceedings limited to (a) adjournment with previous intimation or (b)the delivery of judgment .

Sd/. P.E.Moos,

Remembrancer of Legal Affairs.

To

All the District Magistrates,
All the District and Sessions Judges,
The Accountant General,Bombay.

VHB
28/7
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No.Ref./14/41/1696
Old Custom House Yard ,Fort,
Bombay,10th February 1944.

To

The Remembrancer of Legal Affairs,
Bombay.

Payment of the District Government Pleader's bill in Reference No.14/1941 regarding withdrawal from acquisition of land notified for a public road at Juhu.

In continuation of this officeletter No.Ref.14/41/1026,dated 25th March 1943, I have the honour to forward herewith the Bill of costs preferred by the District Government Pleader,Thana and B.S.D.,in the above case.In this bill he claims a sum of Rs.352-6-0 on account of the Pleader's fees as awarded by the Court on the difference between the amount claimed ,viz,Rs.20,625/- and that awarded by the Special Land Acquisition Officer Viz 140/- The said amount of Rs.352-6-0 has been recovered from the claimant by way of a set off in the amount of excess compensation payable to him.However,according to the Proviso to Rule 21(4) of the Law Officers (Conditions of Service) Rules, "when the claim made by the claimant in any reference exceeds three times the award of the Collector , the fees shall be calculated only on a sum which is equal to twice the amount awarded by the Collector.No fee shall be paid on the amount of the claim which is in excess of such sum." I therefore request you to please inform me whether in this case, the reference being on behalf of the Juhu Municipality,the whole amount as awarded by the Court and claimed by the District Government Pleader in his bill may be allowed or whether he may be asked to prefer a revised bill according to Rule 21 (4) of the Law Officers Rule.

Your Obedient Servant,

Sd/.
Solicitor
Bombay Suburban District.

VHB
28/7

Submitted.

2.Please se e letter from the Collector ,B.S.D.

3.Rule 21(4) of the L.O.(C.O.S.)Rules regulates the fees of a D.G.P. in land acquisition cases.It is immaterial whether the acquisition is on behalf of a Department of the Provincial Govt.or any other local body which makes payment of a D.G.P's fees in cases in which land is acquired on behalf of that body.The D.G. . Thana may be asked to prepare a revised bill in accordance with the provisions of rule 21(4) of the L.O.(C.O.S.) Rules.

4.The Collector , B.S.D. may be informed as in para 3 above.

Sd/.
Supdt.
18/3

Submitted.

2.It appears the acquisition was on behalf of Juhu Municipality.The case is therefore covered by Rule 198(1) L.O.Rs. The Collector however raised the point whether the fees payable to D.G.P. should not be regulated as provided in Rule 21(4) L.O.(C.O.S.) Rules-as the D.G.P. has it appears preferred a claim as taxed by the Court.

3.Whether the acquisition be on behalf of Govt.or on behalf of other bodies the G.P. will have to appear for the Land Aquisition Officer and as such the provisions made in Rule 21(4) apply to his fees in all land ~~again sition~~ acquisition cases.

4,The Collector B.S.D. may therfore be informed that even in the case under reference the fees of the D.G.P.should be regulated as laid down in Rule 21(4) L.O.(C.O.S.)Rs.

Sd/.
4/3

The case has been returned to be to see if in the past there was any ~~enough~~ such references with a view to obtain a definite opinion of the R.L.A. on the point raised.

5.Search made do not show that any such references was made by any Collector or any case on such a point decided before.

6.The question on any how be considered on the merits of the present case alone.The facts are

(1) The lands are acquired for a local body.

(2)Cost of litigation comes out from that body.

(3)R.L.A.does not countersign the bills but the Collector does(Rule 198(1),L.O.Rs.)

(4)The cost in the litigation will be cost as awarded by the Court.under the Law.

7.The question for consideration is whether this cost can be limited to the extenot as provided in Rule 21(4), L.O.(C.O.S) Rules as in the cases in which Govt.is concerned

8.As stated in para 3 above whether the acquisition be on behalf of Govt.or behalf of other bodies, the L. A.,as a retained consel of Govt.will have to appear for the Land acquisition officer. If the land acquired is for municipality, the municipality cannot be represented by their Pd. Separate pleader instead of the G.P. The G.P. is therefore retained also for these cases and he must necessarily get fees as contracted with him in Rule 21(4) L. O.(C.O.S.) Rules even in the cases where Govt.is not concerned .

9.The Collector may therefore be informed as in para 4 above.The question as to what the court should award is not under reference to us.The point that the court may award more as laid down in the Bombay pleaders'that than what is provided in Rule 24(1)L.C.(C. O.S)Rs. and this the municipality may stand to gain does not at present arise. Similarly will be the gain in Govt.cases also under the operation of Rule 24(1)L.O.(C.O.S) Rules.This point need not therefore be considered here ,It is for the Court to see that proper costs are awarded.

Sd/.
28/3

I Agree.The fees in references under the Land Acquisition Act will be regulated by sub rule(4) of rule 21 of L.C.Rules and it is immaterial that fees are taxed by the court in the bill of losts.

Sd/.
28/3

VRB
30/3

No.2576
Office of the Remembrancer
of Legal Affairs,
Bombay Castle,5th April 1944.

Subject:-Payment of the bill of the
District Government Pleader,
Thana,in Reference No.14 of
1941 regarding withdrawal from
Acquisition of Land notified
for a public road at Juhu.

Memorandum.

The undersigned presents comp'iments to the Collector Bombay Suburban District,and with reference to his letter No.Ref./14/41/1696,dated the 10th February 1944, is informed that in the case under reference,the fees of the District Government Pleader should be regulated as laid down in Rule 21(4) of the Law Officers (Conditions of Service) Rules.

2.The bill will accompaniments received with his letter referred to above is returned herewith.

for Remembrancer of Legal
Affairs,

To

The Collector,
Bombay Suburban District.

VHB
30/7
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No.&46 of 1944. Godhra 24th August 1944.

From

Vithaldas C.Shah,Esq.,B.A.LL.B.,
Additional Dist.Govt.Pleader.
Broach and Panchmahals.

To

The Remembrancer of Legal Affairs,Bombay.

Subject:-Fees for appearing on the same day for the Crown in one case and for the Accused (publice Servant) in another case.

Sir,

I have the honour to state that on the 27th day of July 1944 I appeared before the Sessions Court for the prosecution in Sessions Case No.26 of 1944.On the same day before the same Court I also appeared in Criminal Application No.17 of 1944 which was made against a police constable.In this application the Court was requested by the applicant to lodge a complaint against the said constable for offences pubishable under sec.s 193, 194 and 195 read with Sec.109 of the Indian Penal Code alleged to have been committed in relation to a murder case in which the applicant was tried and acquitted.I was directed by the Additional District Magistrate,Broach and Panchmahals ,to appear in this application to defend the police constable Similarly on 18-8-1944 I appeared for the prosecution in two criminal appeals and one criminal application .On the same day I also appeared for two accused persons (also police constable) in a Criminal Revisional Application filed against the said constables for directing further inquiry in a case in which the Resident First Class Magistrate Godhra had discharged them for offences pubishable under Ss.452 and 426 of the I.P.C. Under orders of the Additional District Magistrate,Broach and Panchmahals I have been defending these constables before the Resident First Class Magistrate, Godhra also.

2. It seems to me that the Law Officers Rules do not debar a public prosecutor from charging a separate daily fee for appearing in such cases practically as defence counsel for public servants proceeded against by private persons in respect of acts done or purporting to be done by them in the discharge of their duties .I shall feel grateful if you will kindly

let me know whether my view,that I am entitled to charge separate daily fees in such cases,is correct.

Yourobedient Servant

Sd/. V.C.Shah

Addln.Dist.Govt.Pleader

Broach and PanchMahals.

VHB
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No.7587
Legal Department,
Bombay Castle, 6th November 1944.

Subject:-Fees for appearing on the same day for the Crown in one case and for the Accused (public servant) in another case..

MEMORANDUM.

With reference to his letter No.846, dated the 4th August 1944, on the above subject, the Additional District Government Pleader, Broach and Panch Mahals is informed that an appearance on behalf of a Government servant under Rule 189, Law Officers Rules, will not for the purposes of his fees be an appearance under rule 23(c) of the Law Officers (Conditions of Service) Rules as it would not be an appearance in his capacity of Public Prosecutor (vide rule 189(4) of the Law Officers Rules).

Sd/.
For Remembrance of Legal Affairs

To

The Additional District Government Pleader,
Broach and Panch Mahals, Godhra.

VHB
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